

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**OPPOSITION TO T-MOBILE
PETITION FOR RECONSIDERATION OR CLARIFICATION**

David A. LaFuria
Todd B. Lantor
Robert S. Koppel

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Counsel to:
C Spire Wireless
United States Cellular Corporation
Smith Bagley, Inc.

February 9, 2012

I. Introduction and Summary

Cellular South, Inc. d/b/a C Spire Wireless, United States Cellular Corporation, and Smith Bagley, Inc. (collectively, the “Parties”) hereby oppose the “Petition for Reconsideration or Clarification (“Petition”) filed on November 29, 2011 by T-Mobile USA, Inc. (“T-Mobile”) in the above-captioned proceeding.¹ Specifically, T-Mobile seeks reconsideration of revised Section 54.307(e)(1), which establishes the 2011 baseline support amount as the total 2011 support to a carrier.² In the case where a carrier received support for only a portion of 2011, T-Mobile seeks to have the FCC set the 2011 baseline support amount based on annualized 2011 support. In the case where a carrier filed for ETC designation prior to adoption of the *USF-ICC Transformation Order* on October 27, 2011, T-Mobile seeks to have the FCC set the 2011 baseline support level based on the amount of support that such carrier would have received if it had been a competitive Eligible Telecommunications Carrier (“CETC” or “ETC”) and received support in 2011.

T-Mobile’s Petition is wholly unsustainable and must be denied by the FCC. The FCC made the correct and logical policy decision to set the 2011 baseline support amount based on total calendar year 2011 support. T-Mobile does not justify, nor warrant, relief from this

¹ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) (“*USF-ICC Transformation Order*”), *recon.*, FCC 11-189 (rel. Dec. 23, 2011).

² 47 C.F.R. § 54.307(e)(1).

decision. T-Mobile had over a decade to obtain CETC designations, but it did not file the first of the 8 applications for ETC status noted in its Petition until June 2010 , then it waited an additional five months before filing the second of its applications.³ T-Mobile cannot blame “regulatory delay” for its own failure to wait so long to seek ETC designations. Further, the FCC has made it clear for many years that it wanted to limit USF support and, in the past several years, it would have been clear to even the most casual observer that the FCC was going to make sweeping changes to the USF program to limit – and phase-down -- the amount of support for CETCs.

Thus, T-Mobile cannot credibly claim that it lacked adequate notice, or that the phase-down of its limited 2011 support will somehow disrupt an orderly phase-down. In any event, the FCC has made clear that T-Mobile does not need high-cost USF support.⁴ Finally, the relief requested by T-Mobile would require the FCC to either: (1) increase the 2011 baseline above the 2011 cap; or (2) reduce retroactively the 2011 baseline support level for other CETCs in capped states. Neither alternative is acceptable.

II. T-Mobile Does Not Justify, Nor Warrant, the Relief Requested in its Petition

T-Mobile seeks to have the 2011 baseline support amount calculated based on either: (1) annualizing partial year 2011 support (even if a carrier only received support for several weeks or less during 2011); or (2) retroactively calculating 2011 support in the event ETC status is not granted until 2012 or later. T-Mobile is the only carrier that raised this issue, and would be the

³ T-Mobile filed the ETC designation applications noted in its Petition as follows: Hawaii – June 14, 2010; Georgia – November 16, 2010; Oregon – December 8, 2010; Idaho – December 14, 2010; Mississippi – December 21, 2010; Minnesota – February 8, 2011; Louisiana – March 16, 2011; and Arizona – October 26, 2011.

⁴ *USF-ICC Transformation Order* at ¶ 495.

primary beneficiary of the relief being requested. T-Mobile cannot, and does not, justify, nor warrant, the requested relief.

A. T-Mobile Waited Too Long to File for ETC Status

T-Mobile has had well over a decade to file for ETC status. The first wireless ETC designations were issued in the late 1990's.⁵ Yet, T-Mobile did not file the first of the ETC applications noted in its Petition until June 2010, and the second of these ETC applications was not filed until November 2010. Put simply, T-Mobile sat on its hands for over a decade while hundreds of carriers sought and received ETC designations and now T-Mobile is coming to the FCC seeking special relief.⁶ It is too late.

B. T-Mobile Had More than Adequate Notice

T-Mobile argues that carriers designated in 2011 had no prior notice of the FCC decision to use total calendar year 2011 support for the baseline. In fact, the FCC provided clear notice of the action it was contemplating. The *National Broadband Plan* specifically recommended that the FCC should phase-out high-cost support for CETCs.⁷ The *Connect America Fund NPRM* explicitly proposed to phase-out CETC funding over a five-year period and to redirect to the Connect America Fund “available funding from the phase down of the interim cap.”⁸ By available funding, the FCC was clearly referring to the level of funding “available” under the 2008 CETC interim cap. As explained below, to grant the relief requested by T-Mobile, the FCC

⁵ By 2001, CETC high-cost support had risen to \$17 million. See *High-Cost Universal Service Support*, Order, 23 FCC Rcd. 8834 at ¶ 6 (2008) (“*Interim Cap Order*”)(citing *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared by the Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 3.2, (2007), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009)(“*Interim Cap Order*”).

⁶ In 2010, 446 CETCs, owned by 212 holding companies, received high-cost support. *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 at ¶ 244 (2011)(“*Connect America Fund NPRM*”).

⁷ Federal Communications Commission, *Connecting America: The National Broadband Plan*, released March 16, 2010 at 147 – 148.

⁸ *Connect America Fund NPRM* at ¶¶ 242, 248 – 250.

would either have to increase the level of “available” funding, or reduce the 2011 baseline support level for all other CETCs in capped states where T-Mobile has been, or may at some future time be designated. In all events, the FCC provided notice that it was proposing a baseline based on the 2011 support actually received by carriers.

C. T-Mobile Cannot Blame State Regulators for Its Own Inaction

Incredibly, T-Mobile argues that “the only distinction between [other] ETC applicants and a CETC applicant that was granted in 2011 is a processing delay.”⁹ T-Mobile similarly blames its woes on “bureaucratic delay in processing [its] applications.”¹⁰ The simple truth is that T-Mobile waited too long to file its ETC applications. T-Mobile cannot now blame state regulators for its own failure to move forward in a timely fashion.

State agencies must have sufficient time to review ETC applications. In the ordinary course, it takes time to process such applications. It takes more time if the applications do not provide sufficient information or if they raise policy concerns. It also takes more time if the applicant does not pursue its own pending applications. In a January 13, 2012 ruling on T-Mobile’s pending ETC application in Oregon, the Public Utility Commission of Oregon found that:

Within the past six months, there have been no substantive filings or requests for Commission action by [T-Mobile]. In order to conserve the time and resources of the Commission, it is in the public interest to ascertain [T-Mobile’s] intention to pursue its application or withdraw.¹¹

⁹ Petition at ii.

¹⁰ Id. at 9.

¹¹ T-Mobile West Corporation, Application for Designation as an Eligible Telecommunications Carrier, Docket No. UM 1511, Public Utilities Commission of Oregon, Ruling, Jan. 13, 2012.

On January 27, 2012, T-Mobile filed a letter response requesting more time – until February 29, 2012 – to file a status update.

D. T-Mobile Has No Reasonable Expectation to Receive USF Support at a Certain Level

The FCC and the Courts have made clear that carriers have no reasonable expectation to receive USF support at a certain level. In the *Lifeline Reform Order*, the FCC stated:

Precedent makes clear, however, that carriers have no vested property interest in specific levels of support for the provision of supported services. *** Section 254 does not expressly or implicitly provide that particular companies are entitled to a specified level of ongoing USF support, but rather that support mechanisms be specific and predictable.¹² *** Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support.¹³

E. The FCC Policy Will Not Deprive T-Mobile of an Orderly Transition

T-Mobile also argues that annualizing its 2011 support is necessary to comply with the FCC’s finding that “a transition is desirable to avoid shocks to service providers that may result in service disruptions for consumers.”¹⁴ T-Mobile’s argument is misplaced. The Parties fully agree that an orderly transition is appropriate. However, if T-Mobile only received support for the last two weeks of December (which is the case for Louisiana), the only phase-down that makes sense is to phase-down the actual support that T-Mobile received in 2011. Further, in those states where T-Mobile has not yet received even a penny of support, it makes no sense to argue that a phase-down is necessary. There is, in fact, nothing to phase-down.

¹² See 47 U.S.C. § 254(b)(5).

¹³ *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42, FCC 12-11, rel. Feb. 6, 2012 at ¶ 238 (“*Lifeline Reform Order*”).

¹⁴ *USF-ICC Transformation Order* at ¶ 513, cited in T-Mobile’s Petition at 3.

F. T-Mobile Does Not Need High-Cost USF Support

Finally, in the *USF-ICC Transformation Order*, the Commission found that T-Mobile does need even need USF high-cost support in order to serve the nation's rural communities, noting:

...there is nothing ... in the record that suggests AT&T or T-Mobile would reduce coverage or shut down towers in the absence of ETC support. We therefore find that it is reasonable to assume that the four national carriers will maintain at least their existing coverage footprints even if the support they receive today is phased out.¹⁵

There is absolutely no compelling reason to grant T-Mobile's petition.

III. The Requested Relief Would Require an Increase in Overall USF Support or a Reduction in Support to Other CETCs

T-Mobile asserts that "the requested relief would not increase the total amount of high-cost CETC support to be disbursed during the transition."¹⁶ This can only be correct if the FCC were to reduce the 2011 baseline support level for all other CETCs in capped states. Such a result would be grossly unfair, would disrupt the orderly phase-down among all other CETCs, and would make support for other CETCs anything but "predictable". The FCC would be equating two weeks of support for T-Mobile with 52 weeks of support for other CETCs. The net effect would be to reduce, perhaps significantly, support to other CETCs from January 1, 2012 until June 30, 2016. Moreover, the only beneficiary in most states would be T-Mobile.

In the alternative, to grant T-Mobile's requested relief, the FCC would have to increase the level of the 2011 baseline above the capped level. This would ensure that no other CETC would see a retroactive reduction in its 2011 baseline. However, such an increase would clearly

¹⁵ *USF-ICC Transformation Order* at ¶ 495.

¹⁶ Petition at 7.

contravene the specific objective of the FCC to limit the 2011 baseline to the level of capped support in 2011. Further, such an increase would fly in the face of the overarching goal of the *USF-ICC Transformation Order* – namely, to limit USF support.

Implementation of T-Mobile’s requested relief would be even more problematic for states where T-Mobile has not yet been granted ETC status. T-Mobile asserts that in such case, “monthly baseline support should be based on the monthly high-cost support [the carrier] would have received under the prior rules (including the 2008 interim CETC cap) ‘absent reform’”.¹⁷ It appears that T-Mobile is asking the FCC and USAC to make a projection of the support that T-Mobile would have received in 2011. Exactly how would this projection be made? Would USAC use line counts for a period before T-Mobile is actually designated as an ETC? What is the deadline for T-Mobile to get designated? What if T-Mobile’s application for ETC designation is ultimately denied? Would the FCC then have to adjust, yet again, the 2011 baseline for all other CETCs?

¹⁷ Petition at ii.

IV. Conclusion

For the reasons set forth herein, the Commission should deny T-Mobile's Petition.

Respectfully submitted,

By: _____

David A. LaFuria

Todd B. Lantor

Robert S. Koppel

LUKAS, NACE, GUTIERREZ & SACHS, LLP

8300 Greensboro Drive, Suite 1200

McLean, VA 22102

(703) 584-8669

Counsel to:

C Spire Wireless

United States Cellular Corporation

Smith Bagley, Inc.

February 9, 2012

CERTIFICATE OF SERVICE

I, Robert S. Koppel, hereby certify that on February 9, 2012, a true and correct copy of the foregoing Opposition was sent by electronic mail to the parties listed below:

Kathleen O'Brien Ham
David R. Conn
Luisa L. Lancetti
Indra Sehdev Chalk

T-Mobile USA, Inc.
601 Pennsylvania Ave., N.W.
North Building, Suite 800
Washington, DC 20004